IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

WEDNESDAY, THE 10TH JANUARY 2007 / 20TH PAUSHA 1928

WP(C).No. 1043 OF 2007(Y)

PETITIONER:

BIJU AUGUSTINE,
ST.SEBASTIAN TRADERS, P.O.NELLIPARA,
KANHANGAD.

BY ADV. SRI.N.MURALEEDHARAN NAIR
SRI.V.K.SHAMUSUDHEEN

RESPONDENTS:

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1. SALES TAX OFFICER,
TALIPARAMBA.

2. DEPUTY COMMISSIONER (APPEALS),
COMMERCIAL TAXES, KOZHIKODE.

3. SPECIAL DEPUTY TAHSILDAR (R.R.),
TALIPARAMBA.

GOVT. PLEADER SRI. SOJAN JAMES.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMAN, J.

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W.P.(C) NO. 1043 OF 2007

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DATED THIS, THE 10TH DAY OF JANUARY, 2007

J U D G M E N T

As against the revised assessment order Ext.P1, petitioner has preferred Ext.P2 appeal along with stay petition, Ext.P3. According to him, in this case, a revised order of assessment was passed under Section 19 of the Kerala General Sales Tax Act and actually, the penalty order itself was passed after the assessment order, and as such, there is no escapement of any turnover. This is an aspect which the appellate authority should consider while disposing of the stay petition.

2. The apprehension of the petitioner is that in all cases, the appellate authority imposes a condition to pay 50% without reference to the merits of each case. It is true that the appellate authority cannot pass orders in a mechanical way without application of mind and this position is settled by various decisions. Hence, if the petitioner is able to make out a strong prima facie case, certainly the appellate authority will consider such contention and mould the relief accordingly, while disposing of the petition for interim stay.

In the result, there will be a direction to the appellate authority to consider Ext.P3 and dispose of the same in the light of what has been stated above. Till such time orders are passed on Ext.P3, further proceedings pursuant to Ext.P4 shall stand stayed and thereafter, the matter will be governed by any order that may be passed by the appellate authority.

The writ petition is disposed of as above.

P.R. RAMAN,
JUDGE.

knc/-